

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
NATIONAL FOOD CORPORATION,)
d.b.a. Northwest Egg Sales,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 988

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

This matter, the appeal of a \$100.00 civil penalty for an alleged emission of an air contaminant in violation of respondent's Regulation 1, came on for formal hearing before Board members, W. A. Gissberg (presiding) and Art Brown on July 23, 1976, in Everett, Washington.

Appellant National Food Corporation, d.b.a. Northwest Egg Sales, appeared through one of its officers, Vince E. Bookey; respondent Puget Sound Air Pollution Control Agency appeared by and through its attorney, Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were admitted. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Pursuant to RCW 43.21B.260 respondent has filed its Regulation 1
7 with the Pollution Control Hearings Board and official notice thereof
8 is hereby taken.

9 II

10 On February 2, 1976, near Marysville, Washington, there was emitted
11 from appellant's incinerator an air contaminant for a period aggregating
12 at least seven consecutive minutes which was darker in shade than that
13 designated as No. 1 on the Ringelmann Chart, namely varying from
14 No. 3 to No. 5.

15 III

16 Respondent's inspector first observed the plume of black smoke
17 while approximately 1/4 mile distant from appellant's plant. He then
18 positioned himself at a point estimated to be 1,000 feet southwesterly
19 from the plant, took photographs and commenced his smoke plume
20 observation reading.

21 IV

22 Respondent issued a notice of violation and imposed a civil penalty
23 in the amount of \$100.00, from which this appeal followed. Respondent
24 does not deny the emission of the air contaminant as hereinabove
25 described, but contends that the civil penalty is unwarranted because
26 respondent's inspector, instead of making an observation of the emissio

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1 should have gone directly to inform appellant's personnel of the smoke
2 problem.

3 V

4 Respondent's Regulation 1, Section 9.03(b)(1) makes it unlawful
5 for any person to cause or allow the emission of any air contaminant
6 for the time and of the length described in Finding of Fact II hereof.

7 VI

8 The emission was caused by the failure of an employee, when he
9 ignited the incinerator, to turn on a blower which, had he done so,
10 would have prevented the smoke problem.

11 VII

12 Approximately three months prior to the instant violation,
13 respondent had imposed and appellant had paid a civil penalty of \$100.00
14 for a similar incinerator smoke emission violation. Only after the
15 second violation has appellant posted written instructions for its
16 personnel designed to assure that in the future a blower will be
17 activated when the incinerator is lighted off.

18 VIII

19 Any Conclusion of Law hereinafter recited which should be deemed
20 a Finding of Fact is hereby adopted as such.

21 CONCLUSIONS OF LAW

22 I

23 Appellant violated respondent's regulations; the civil penalty is
24 reasonable in amount, and should be affirmed.

25 II

3 The purpose of the Washington Clean Air Act is to protect human

27 FINAL FINDINGS OF FACT,
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1 health and safety and comply with the requirements of the Federal Clean
2 Air Act. The Act establishes several methods by which its laudatory
3 goals may be achieved. The statute makes available the imposition of
4 both criminal and civil penalties against persons who violate the
5 regulations of any air pollution control agency. In addition, the
6 statute mandates and requires the agency's control officer to not
7 only observe but also enforce the Clean Air Act and the rules and
8 regulations of the agency.

9 III

10 We are told by appellant that the notice of violation was "unjust"
11 because respondent's inspector took the time to observe the plume and
12 ascertain whether a violation existed. The Board refuses to shift the
13 responsibility for this incident from appellant to respondent.

14 IV

15 Any Finding of Fact which should be deemed a Conclusion of Law
16 is hereby adopted as such.

17 ORDER

18 The notice and order of civil penalty is affirmed.

19 DONE at Lacey, Washington, this 3d day of August, 1976.

20 POLLUTION CONTROL HEARINGS BOARD

21 
22 W. A. GISSBERG, Member

23 
24 ART BROWN, Member

25
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27 CONCLUSIONS OF LAW AND ORDER